

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RHONDA D. LACEY,	§
	§ No. 447, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0710028678
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 11, 2011

Decided: April 19, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 19<sup>th</sup> day of April 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Rhonda D. Lacey, filed an appeal from the Superior Court's July 6, 2010 order accepting the Commissioner's June 15, 2010 report, which recommended that Lacey's first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.<sup>1</sup> We find no merit to the appeal. Accordingly, we affirm.

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<sup>1</sup> Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62. Because this was Lacey's first postconviction motion, the Commissioner requested Lacey's counsel to submit an affidavit pursuant to Rule 61(g)(2). *Horne v. State*, 887 A.2d 973, 975 (Del. 2005).

(2) The record before us reflects that, in May 2008, Lacey pleaded guilty to one count of Robbery in the First Degree and two counts of Attempted Robbery in the Second Degree. On each of the two convictions of attempted second degree robbery, the Superior Court sentenced Lacey as a habitual offender to 5 years at Level V.<sup>2</sup> On the first degree robbery conviction, the Superior Court sentenced Lacey to 10 years at Level V, to be suspended after 3 years for 7 years at Level IV Halfway House or Home Confinement, in turn to be suspended after 6 months for 2 years at Level III probation. Lacey did not file a direct appeal of her convictions. Lacey's subsequent motion for sentence modification was denied by the Superior Court.

(3) In this appeal from the Superior Court's denial of her first postconviction motion, Lacey claims that a) her counsel provided ineffective assistance in connection with her guilty plea because he failed to negotiate a favorable plea agreement and failed to advise her of the consequences of her plea; b) her guilty plea was involuntary because of her counsel's ineffective assistance; c) the Superior Court abused its discretion by imposing an excessively harsh sentence; and d) the Superior Court erred by declaring her a habitual offender because the Oklahoma felonies used to establish her

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<sup>2</sup> Del. Code Ann. tit. 11, §4214(a).

habitual offender status would have been misdemeanors if they had been committed in Delaware.

(4) Lacey's first two claims implicate the standards applicable to an ineffective assistance of counsel claim within the context of a guilty plea. In order to prevail on such a claim, the defendant must demonstrate that there is a reasonable probability that, but for his or her counsel's professional errors, he or she would not have pleaded guilty, but would have insisted on proceeding to trial.<sup>3</sup>

(5) The record before us reflects that Lacey's counsel negotiated a plea agreement for his client that resulted in the reduction of two attempted first degree robbery charges to the second degree and in a non-habitual sentence for a conviction of first degree robbery. While Lacey's sentences were significant, she was facing the possibility of life in prison had she gone to trial. As such, the record does not support Lacey's contention that her counsel was ineffective for failing to negotiate a favorable plea agreement on her behalf. Moreover, given the benefit to Lacey as a result of the plea agreement, there is no support for a contention that, but for her counsel's professional errors, she would have insisted on proceeding to trial.

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<sup>3</sup> *Albury v. State*, 551 A.2d 53, 60 (Del. 1988).

(6) The transcript of the plea colloquy belies Lacey's claim that her counsel failed to advise her of the consequences of her plea as well her claim that her plea was involuntary. During the plea colloquy, Lacey acknowledged signing both the plea agreement and the TIS guilty plea form. The judge reviewed the charges with her and she acknowledged that she had committed the offenses. The judge also reviewed with her the recommended sentences, including the factual basis for her status as a habitual offender. Lacey stated that her plea was voluntary and that she was satisfied with her counsel's representation. In the absence of clear and convincing evidence to the contrary, Lacey is bound by the statements she made during the plea colloquy.<sup>4</sup> Moreover, her knowing and voluntary plea waives any claim of an error or defect occurring prior to the entry of the plea.<sup>5</sup>

(7) Lacey's third claim is that the Superior Court imposed an excessively harsh sentence. As discussed above, she faced the possibility of life in prison had she gone to trial rather than accepting the State's plea offer. There is, moreover, no evidence that Lacey's sentences exceed the statutory limits<sup>6</sup> or that the Superior Court was motivated by impermissible

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<sup>4</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

<sup>5</sup> *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

<sup>6</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

factors in sentencing her.<sup>7</sup> As such, there are no grounds to support Lacey's claim of an excessive sentence.

(8) Lacey's final claim is that her Oklahoma felony convictions do not properly support her status as a habitual offender because they would constitute misdemeanors if committed in Delaware. Under §4214(a), a predicate offense is defined as "a felony . . . under the laws of this State, and/or any other state, United States or any territory of the United States . . . ." Because Lacey's Oklahoma convictions constituted felonies in that state, the Superior Court properly relied upon them to support Lacey's status as a habitual offender.<sup>8</sup> Moreover, Lacey admitted in her plea agreement that she was subject to sentencing as a habitual offender as a result of her previous felony convictions. As such, she has waived any challenge to her habitual offender status.<sup>9</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>7</sup> *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992).

<sup>8</sup> Lacey's reliance on *Fletcher v. State*, 409 A.2d 1254 (Del. 1979) is misplaced because the subsection at issue in that case was §4214(b), not §4214(a), and because the foreign predicate felony in that case would have resulted only in a finding of delinquency if committed in Delaware, and not a criminal conviction.

<sup>9</sup> *Loncki v. State*, Del. Supr., No. 320, 2006, Berger, J. (Jan. 9, 2007).